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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,404	01/27/2004	Karl David McAllister	US20010207	3362
173 7590 07/13/2007 WHIRLPOOL PATENTS COMPANY - MD 0750 500 RENAISSANCE DRIVE - SUITE 102 ST. JOSEPH, MI 49085			EXAMINER PERRIN, JOSEPH L	
			ART UNIT 1746	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/766,404

Applicant(s)

MCALLISTER ET AL.

Examiner

Joseph L. Perrin, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.  
4a) Of the above claim(s) 1-11, 13, 16, 18, 19 and 22-40 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 12, 14, 15, 17, 20 and 21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 20040127.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Species B, claims 12-24, and subspecies V.b. (claim 14), VI.b. (claims 15 and 17), and VII.c. (claims 20-21) in the reply filed on 04 June 2007 is acknowledged. Cumulatively, the elected invention reads in independent claim 12 and claims 14, 15, 17, 20 & 21 dependent thereon.
2. Claims 1-11, 13, 16, 18, 19 & 22-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species/invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 04 June 2007. Applicant is reminded that upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12 & 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,862,553 to HABERL et al. ("HABERL"). HABERL discloses a conventional

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automatic washing machine having a wash chamber (rotating drum) and oscillating the drum at various rotating speeds (see the abstract, col. 11, lines 17-21 & col. 12, lines 5-7). It is noted that the item loading and wash liquid supplying steps would be inherent to the washing process as is common knowledge in the washing machine art. Accordingly, recitation of HABERL reads on applicant's claimed invention.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 12, 14, 15, 17, 20 & 21 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 7,127,767 to MCALLISTER et al.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 15 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art ("AAPA") in view of HABERL. In Figure 1 and relative

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associated text of applicant's original disclosure, applicant discloses that it is known to operate a horizontal axis washing machine with clockwise and counterclockwise oscillations including pauses thereinbetween. However, AAPA doesn't expressly disclose using speed varying oscillations. As previously cited, HABERL teaches that the use of speed varying oscillations is known and that it is known that the wash chamber speed in an oscillating washing machine varies between the beginning of an oscillation and the peak of the oscillation. Therefore, the position is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the known washing machine (as discussed in AAPA) with speed varying oscillations to improve laundry agitation (e.g. by changing speeds and increasing laundry drop thereby increasing agitation). Moreover, it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

11. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over HABERL in view of U.S. Patent Publication No. 2003/0035757 to COORESMANS *et al.* (hereinafter "COORESMANS"). Recitation of HABERL is repeated here from a previous rejection. However, while HABERL discloses variable speeds HABERL does not expressly disclose washing the items being oscillated in random variable speeds. COORESMANS teaches that it is known to optimize liquid movement and subsequent washing force in an oscillating washing apparatus by using either regular, periodic oscillation or random, non-periodic irregular oscillation (see paragraph [0064]).

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Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the known oscillation cycle disclosed by applicant with either a periodic oscillation or a random, non-periodic irregular oscillation in order to optimize a washing action. It is further noted that it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Double Patenting***

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 12, 14, 15, 17, 20 & 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S.

Patent No. 7,127,767. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because the instantly claimed invention fully encompasses the patented claims with the exception of the oscillation speed varying. However, in col. 5, lines 22-26, the '767 patent clearly discloses that the controller provides either an on/off or variable speed signal to the motor to induce impeller rotation for oscillation. Therefore, the position is taken that one having ordinary skill in the art at the time the invention was made would have at once envisaged using either of the specified oscillation signals from the controller to the motor to induce the motor to rotate given the limited number of types of oscillation signals disclosed (i.e. an on/off or variable speed signal).

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent Publication No. 2004/0139767 to WEINMANN et al., U.S. Patent Publication No. 2004/0112096 to STEPHENS, U.S. Patent Publication No. 2002/0079861 to SCHUBERT, U.S. Patent No. 6,516,485 to SAVKAR et al., U.S. Patent No. 6,384,568 to SCHUBERT, U.S. Patent No. 6,189,171 to SAVKAR et al., U.S. Patent No. 5,926,887 to THOMPSON et al., U.S. Patent No. 5,341,452 to ENSOR, U.S. Patent No. 4,857,814 to DUNCAN, U.S. Patent No. 4,806,171 to HERSHBERGER, U.S. Patent No. 4,689,973 to HERSHBERGER, U.S. Patent No. 4,476,736 to HERSHBERGER, U.S. Patent No. 4,437,325 to HERSHBERGER, U.S. Patent No. 4,434,546 to HERSHBERGER, U.S. Patent No. 4,344,198 to ARENDT et al., U.S. Patent No. 4,327,302 to HERSHBERGER, U.S. Patent No. 4,325,234 to TOMA, U.S. Patent No.




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4,220,232 to FEY et al., U.S. Patent No. 4,170,882 to BRENNER et al., & U.S. Patent No. 4,061,000 to JACOBS, each teaching the known application of a variable speed motor in an oscillating washing machine.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Joseph L. Perrin, Ph.D.  
Primary Examiner  
Art Unit 1746

JLP